IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2282 OF 1992.

Shri Kashinath Vasudeo Khandake
since deceased by his legal
heirs and representatives :-
Smt.Indubai Kashinath Khandake
and ors. : Petitioners

versus

Shri Yesu Rama Nikam, since
deceased by his legal heirs
Tukaram Yeshwant Nikam & ors. : Respondents.

Ms.Smita Mane h/f Mr.Praulla Shah or the petitioners.

CORAM : D.G.DESHPANDE, J.
DATED : September 15, 2006.

ORAL ORDER

1. Heard Ms.Mane, the learned advocate appearing for the petitioners. Original Petitioner Kashinath is the owner of certain properties scattered over the six villages. Particulars of these properties of the petitioner are given in the order of Aval Karkoon, Tenancy Court, Patan at Exhibit "A". The petitioner had applied in respect of all that properties under Section 88(C) of the Bombay Tenancy and

Agricultural Lands Act, 1948 (herein after referred to as the "Tenancy Act"). This is a provision to claim exemption in respect of certain lands leased by a person if annual income from all the lands does not exceed 1500 rupees. The exemption that is given to such landlord is in respect of provisions of Sections 32 to 32R i.e. Section 32 is about purchase of land by the tenant and other provisions from 32 to 32R in that regard.

2. The core issue, when such an application under section 88C is made, is whether the landlord had income less than Rs.1500/- from his holdings, even though the present petitioner had applied for exemption under Section 88C in respect of all the lands as per the particulars given below :-

Sr.No.	Village Name	Survey No.	Area	Amt.	Hissa
1]	Tarale	285/2	2-01	16-50	0-8-0
		531	1-26	10-56	0-8-0
		527/1	1-36	7-56	0-8-0

		34/2	0-18	2-22	0-8-0
		538	0-11	0-97	0-8-0
		1/1	0-13	0-94	0-8-0
		573/3	0-03	0-15	0-8-0
		573/1	2-10	4-50	0-2-8
		275/2	2-28	10-37	0-2-8
		440/5	4-11	4-98	0-1-9
2]	Bambawade	76/3	11-22	36-56	0-2-8
		76/1	2-03	6-94	0-2-8
		73/95	0-20	0-75	0-16-0
		73/41	0-11	0-56	0-16-0
3]	Marloshi	22/1	0-32	7-12	0-16-0
4]	Nanegaon (Bk)	175/1	7-22	27-62	0-8-0
5]	Keloli	52/11	0-16	3-00	0-4-0
		62/1	0-16	1-84	0-4-0
		63	1-38	9-40	0-4-0
6]	Ghot	58/2	4-00	1-87	0-2-8
		74/1	24-00	5-06	0-2-8

His advocate informed the authorities in writing

that the lands situated at Bambawade, Marloshi and Ghot and lands Survey Nos. 285/2 and 275/2 at Tarale were the lands in respect of which the landlord was not claiming any exemption. In the order at Exhibit-"A" passed by the Aval Karkoon it is mentioned that in the proceedings before the Aval Karkoon the landlord did not personally remain present but his Power of Attorney was present. His statement was recorded. The landlord/petitioner, at the relevant time in 1982, was about 75 years of age and, according to him, the total income from the aforesaid lands [excluding the lands in respect of which the Certificate under Section 88C was not claimed as stated above] was less than Rs.1500/-. The Aval Karkoon, after inquiry, found that the petitioner had failed to prove this important aspect of the matter i.e. his income being less than Rs.1500/- from all these lands. No evidence, either oral or documentary, was tendered in this regard and, therefore, this application under Section 88C of the Tenancy Act was dismissed.

3. The landlord then filed an appeal before the Sub-Divisional Officer Satara Division, Satara vide Tenancy Appeal No.29/83. In fact,

these proceedings were going on since 1958, the Sub-Divisional Officer, Satara dismissed the appeal on 17/03/1990. The landlord thereafter filed a Revision before the Maharashtra Revenue Tribunal (herein after referred to as "the MRT"), Pune. The MRT has decided the revision and dismissed it on 18/07/1991 on the ground that the revision was not tenable because order under Section 88C attains finality after the order of the Collector.

4. The advocate for the petitioner tried to contend that because of his old age, the landlord/petitioner could not remain present before the Aval Karkoon and lead his evidence and, therefore, one opportunity should be given to the petitioner/landlord to prove that his income was less than Rs.1500/- in 1958-59.

. It is very unlikely that when the original landlord Kashinath is dead, his legal heirs and representatives, who have been brought on record, shall be in a position to verify about the income of the landlord about fifty years ago. Nobody from them was present when the matter was originally proceeded. The power of attorney

holder of the landlord was present. But he also did not lead any evidence about the income. Even though the prayer for remand in order to enable the landlord to lead evidence has to be rejected, the order of the Sub-Divisional Officer, Satara dated 17/3/1990, on the face of it, appears to be perverse. It is true that after this order of the Sub-Divisional Officer the landlord preferred the revision before the MRT and the MRT rejected that revision on technical ground that the order of the Collector attains finality and no revision is tenable. But the order of the Sub-Divisional Officer shows that even though the notices of the appeal were served upon the appellant and respondents and even though the advocate for the appellant and respondents filed their written arguments, the Sub-Divisional officer did not at all consider any of the points raised in those written arguments and came to the conclusion that the impugned order was just and proper. I am reproducing the observations of the learned Sub-Divisional Officer in this regard. They are as under :-

> "Notice were issued and served on the parties fixing the date for hearing.

> During the course of enquiry the advocate on behalf of appellant has filed written argument 3/10/88 and the advocate on behalf of respondent No.1 has filed written argument on 20/11/88 I have gone through the argument as well as records and proceedings of the Lower Court in this behalf personally and found that the learned lower Court has completed the enquiry and decided the case according to the provisions of law. I, therefore, seen no reason to interfere the order of the learned lower Court dated 26/11/82."

It will be clear from this that the Sub-Divisional Officer did not apply his mind to the facts and submissions made in the written notes of arguments given by the appellant and respondents. He should have considered that arguments and the consideration should have been reflected in his order. Therefore, the order of the Sub-Divisional Officer is perverse. I have already noted that the MRT has dismissed the appeal of the landlord because of this order of the Sub-Divisional Officer. But that rejection of the revision was on technical ground. This

aspect was at all not considered and even though the Deputy Collector's order is final, the Sub-Divisional Officer's order is perverse for non-consideration of any of the submissions made by the appellant and respondents. The matter is, therefore, required to be remanded. Hence the following order :-

:ORDER:

The petition is allowed.

Impugned order of the Maharashtra Revenue Tribunal, Pune dated 18/07/1991 and earlier order of the Sub-Divisional Officer, Satara dated 17/03/1990 are set aside.

Matter is remanded to the Sub-Divisional Officer, Satara for deciding Tenancy Appeal No.29/83 after hearing the appellants and respondents.

This order to be immediately communicated by the petitioners to the Sub-Divisional

Officer, Satara, who will give notices to the appellants and respondents in the appeal and, after hearing the advocates only or parties decide the appeal on its own merits.

The Sub-Divisional Officer Satara should decide the appeal within a period of four months of the first appearance of the parties before him.

Rule is made absolute in the above terms.

Certified copy expedited.

[D.G.DESHPANDE, J.]